

**IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT  
IN AND FOR ORANGE COUNTY, FLORIDA  
CIRCUIT CIVIL DIVISION**

**CENTRAL FLORIDA TOURISM OVERSIGHT  
DISTRICT,**

**Plaintiff,**

**v.**

**CASE NO.: 2023-CA-011818-O**

**WALT DISNEY PARKS AND RESORTS  
U.S., INC.,**

**Defendant.**

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**PLAINTIFF’S REPLY TO DEFENDANT’S AFFIRMATIVE DEFENSES**

Plaintiff Central Florida Tourism Oversight District (the “District”) pursuant to Florida Rule of Civil Procedure 1.100, hereby files its reply to the affirmative defenses asserted by Defendant Walt Disney Parks and Resorts U.S., Inc. (“Disney”) in Defendant’s Answer, Affirmative Defenses, and Counterclaims and states:

**REPLY TO ALL AFFIRMATIVE DEFENSES**

The District denies that any of Disney’s affirmative defenses are viable. Additionally, the District files this reply in avoidance of those affirmative defenses identified below. In so doing, the District does not assume any burden of proof it would not otherwise bear. The District further reserves the right to move to strike matters that are not properly pleaded or otherwise improper and to assert additional matters in avoidance that may be discovered in the course of this litigation.

**REPLY TO FIRST AFFIRMATIVE DEFENSE**

Disney has unclean hands. Disney maintained absolute control over the Reedy Creek Improvement District (“RCID”) before the District replaced RCID as its successor, and Disney is

the cause of the Agreements' invalidity. Additionally, the District has standing to seek declaratory and injunctive relief. *See* ch. 86, Fla. Stat.; § 163.3243, Fla. Stat.; *see also Palm Beach Cnty. Health Care Dist. v. Everglades Mem'l Hosp., Inc.*, 658 So. 2d 577, 581 (Fla. 4th DCA 1995); *City of Hollywood v. Fla. Power & Light Co.*, 624 So. 2d 285, 287 (Fla. 4th DCA 1993), as clarified (Oct. 18, 1993); *City of Oldsmar v. State*, 790 So. 2d 1042, 1050–51 (Fla. 2001).

### **REPLY TO SECOND AFFIRMATIVE DEFENSE**

Disney has unclean hands. Disney maintained absolute control over RCID before the District replaced RCID as its successor, and Disney is the cause of the Agreements' invalidity. Moreover, as a government entity, RCID lacked authority to circumvent statutory and constitutional requirements. Finally, Disney knew or should have known that the Agreements were fatally defective and is charged with a duty to ascertain their legality.

### **REPLY TO THIRD AFFIRMATIVE DEFENSE**

Disney has unclean hands. Disney maintained absolute control over RCID before the District replaced RCID as its successor, and Disney is the cause of the Agreements' invalidity. Moreover, at the time that the Development Agreement and Restrictive Covenants were allegedly heard, the District was not independent of Disney's control and thus could not have waived its opportunity to object and challenge the Agreements. Further, as a government entity, the District cannot operate under contracts that violate governing statutory and constitutional provisions and thus cannot waive compliance. Finally, Disney knew or should have known that the Agreements were fatally defective and is charged with a duty to ascertain their legality.

### **REPLY TO FOURTH AFFIRMATIVE DEFENSE**

Disney has not alleged any meaningful actions taken in reliance on the Agreements. Additionally, § 163.3241, Fla. Stat., of the Florida Local Government Development Agreement Act (the “Development Agreement Act”) specifically provides that the Development Agreement is subject to modification and revocation based on subsequent acts of the State. Disney entered into the Agreements with full knowledge of the terms of the Development Agreement Act. *See* Development Agreement at § I.(C) (providing that the agreement was “entered into pursuant to the authority of the Florida Local Government Development Agreement Act, which consists of Sections 143.3220-163.3243 Florida Statutes”). Further, as a government entity, the District cannot operate under contracts that violate governing statutory and constitutional provisions. Finally, Disney knew or should have known that the Agreements were fatally defective and is charged with a duty to ascertain their legality.

### **REPLY TO FIFTH AFFIRMATIVE DEFENSE**

Disney has unclean hands. Disney maintained absolute control over RCID before the District replaced RCID as its successor, and Disney is the cause of the Agreements’ invalidity. Additionally, as a government entity, the District cannot operate under contracts that violate governing statutory and constitutional provisions. Finally, Disney knew or should have known that the Agreements were fatally defective and is charged with a duty to ascertain their legality.

### **REPLY TO SIXTH AFFIRMATIVE DEFENSE**

Disney has unclean hands. Disney maintained absolute control over RCID before the District replaced RCID as its successor, and Disney is the cause of the Agreements’ invalidity. Additionally, Disney has failed to plead this defense with the required specificity. *See Cocoves v. Campbell*, 819 So. 2d 910, 912–13 (Fla. 4th DCA. 2002) (“An affirmative defense of fraud or

misrepresentation should specifically identify the misrepresentations or omissions of fact and how those acts or omissions were false or misleading.”) (citations omitted). Further, as a government entity, the District cannot operate under contracts that violate governing statutory and constitutional provisions. Finally, Disney knew or should have known that the Agreements were fatally defective and is charged with a duty to ascertain their legality.

#### **REPLY TO SEVENTH AFFIRMATIVE DEFENSE**

Disney has unclean hands. Disney maintained absolute control over RCID before the District replaced RCID as its successor, and Disney is the cause of the Agreements’ invalidity. Moreover, this defense fails to provide the ultimate facts showing Disney’s entitlement to relief. *Advanced Fla. Med. Grp., Corp. v. Progressive Am. Ins. Co.*, 364 So. 3d 1131, 1133 (Fla. 6th DCA 2023) (“Under Florida’s fact pleading standard, an affirmative defense must contain ‘a short and plain statement of the ultimate facts showing that the pleader is entitled to relief’ to be properly pled.”). Additionally, as a government entity, the District cannot operate under contracts that violate governing statutory and constitutional provisions.

#### **REPLY TO TWELFTH AFFIRMATIVE DEFENSE**

The enabling legislation only applies to “lawful . . . contracts.” Ch. 2023-5, Laws of Fla. The Agreements are unlawful and thus void ab initio.

Dated: September 6, 2023

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that the foregoing was electronically filed with the Clerk of the Court on September 6, 2023, by using the Florida Courts eFiling Portal, which will provide electronic notification to all counsel of record in this action as set forth herein:

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